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## SCHEDULE

### EDINBURGH MERCHANT COMPANY

#### PART VI

##### ENDOWMENTS TRUST

###### *A. Incorporation powers, etc., of endowments trust*

###### *Powers of endowments trust*

- 92 The former Merchant Company Endowments Trust incorporated by the Act of 1960, shall continue in being under the same name, as a body corporate with perpetual succession and a common seal; and with power to purchase, acquire, hold, sell, lease and dispose of lands and other property heritable, moveable, real and personal, to sue and be sued, and with all other rights, powers and privileges of a body corporate.

###### *Endowments trust fund vested in endowments trust*

- 93 The existing endowments trust fund shall, subject to the debts, liabilities, contracts and obligations affecting the same, continue to be vested in the endowments trust and shall be held, used and disposed of by the endowments trust for the purposes of and in accordance with the provisions of this Order.

###### *Constitution of endowments trust*

- 94 (1) The endowments trust shall consist of 24 members as follows:—
- (a) the Master, the treasurer and the 12 assistants of the Company for the time being ex-officio;
  - (b) five members of, and to be elected by, the council for the City of Edinburgh;
  - (c) two ministers of the Edinburgh Presbytery of the Church of Scotland to be elected by the said Presbytery; and
  - (d) three persons to be elected by the Company from among the members.
- (2) The existing members of the endowments trust shall, subject to the provisions of this Order, continue in office until the second Thursday of November first occurring after the commencement of this Order.

###### *Election and period of office of members of endowments trust*

- 95 (1) The election of the elected members of the endowments trust shall take place annually at any general meeting of the Company in October or November:
- Provided that the election shall not take place after the date of the annual meeting from which date the elected members shall hold office until the following annual meeting.
- (2) Any member of the endowments trust, upon the expiry of his term of office, shall be eligible for re-election if otherwise qualified under this Order.

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*Filling of vacancies among elected members of endowments trust*

- 96 In the event of any vacancy occurring among the elected members of the endowments trust at any time the body which elected the person whose office has become vacant shall elect another person to fill such vacancy at a meeting of such electing body to be held within six weeks of such vacancy occurring and the person so elected shall, subject to the provisions of this Order, hold office during the unexpired portion of the period of office of the person in whose place he has been elected.

*Meetings of endowments trust*

- 97 (1) Meetings of the endowments trust shall be held as the endowments trust may direct or, in the absence of any direction, as the Master, or in his absence, the treasurer, may direct and all such meetings shall be called by notice issued by the secretary and posted at least 7 days before the date of meeting.
- (2) The endowments trust may adjourn any meeting as they see fit.

*Chairman of endowments trust*

- 98 (1) The Master, or in his absence the treasurer, shall preside as chairman at all meetings of the endowments trust:
- Provided that in the absence of the Master and the treasurer, a chairman shall be chosen from among the members of the endowments trust present.
- (2) The chairman of the meeting shall, in all cases of equality of votes, have a casting vote in addition to any other he may have.

*Quorum of meetings of endowments trust*

- 99 At all meetings of the endowments trust not less than 10 members thereof shall constitute a quorum.

*Committees of endowments trust*

- 100 The endowments trust may, subject to the provisions of this Order, appoint committees and convenors of such committees and may confer on such committees such powers and give them all such instructions as may appear to the endowments trust expedient and shall fix the quorum of each such committee.

*Proceedings of endowments trust not to be invalidated by vacancies, etc*

- 101 Proceedings of the endowments trust or any committee thereof shall not be invalidated in consequence of there being any vacancy in their membership at the time of such proceedings or in respect of any informality in the election of any of the elected members thereof.

*Appointment of officials by endowments trust*

- 102 (1) The endowments trust may appoint and employ all such officials as they may deem necessary for carrying on of their business:
- Provided that—

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- (a) all existing officials appointed and employed by the endowments trust shall continue to hold their respective offices on their respective terms and conditions; and
  - (b) the secretary shall also be secretary to the endowments trust.
- (2) All the officials appointed and employed by the endowments trust shall hold their respective offices at the pleasure of the endowments trust.

*Endowments trust may provide pensions, etc., for officials*

- 103 The endowments trust may grant to their officials such pensions and life assurance cover as they may deem appropriate, and may join with the Company or any institution connected therewith, for the purpose of contributing to a superannuation fund for such officials, or make payment to an insurance company for a like purpose.

*Application of income of endowments trust fund*

- 104 Subject to the provisions of this Order, the free income of the endowments trust fund shall, after meeting the expenses of management (including payments authorised under section 103 (Endowments trust may provide pensions, etc., for officials) of this Order), be applied in the payment of annual pensions or gifts of money, and in providing (by way of gift, loan or on partial or full repayment) lodging, clothing, food, fuel, furnishings or other benefits to persons who are qualified as hereinafter mentioned in this Order to receive such benefits.

*Power of endowments trust to borrow*

- 105 The endowments trust may borrow or expend capital for the purposes of this Part of this Order (to which capital may properly be applied).

*Reserve fund of endowments trust*

- 106 (1) The endowments trust may maintain a reserve fund by setting aside out of the revenue of the endowments trust fund such sums as they think fit.
- (2) The reserve fund shall be applied by the endowments trust in such way and manner as they deem expedient for the benefit of the endowments trust fund and (inter alia) towards meeting—
- (a) the excess of expenditure over revenue of the endowments trust fund occurring at the close of any financial year as ascertained by the registered auditor of the endowments trust for the time being;
  - (b) the losses which may be sustained by the endowments trust fund through the depreciation of securities or insolvency of debtors; and
  - (c) extraordinary expenditure on lands and buildings forming part of the endowments trust fund.

*Accounts to be kept by endowments trust and audited*

- 107 (1) The endowments trust shall keep accounts of the endowments trust fund showing the income and expenditure and assets and liabilities thereof, to be made up to a date to be fixed by the endowments trust.

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- (2) The said accounts shall be audited by a registered auditor on behalf of the endowments trust.
- (3) A copy of the abstract of the accounts of the endowments trust shall be sent each year to each member of the endowments trust resident in Great Britain.

*B. Payments, etc., to beneficiaries*

*Classes of beneficiaries*

- 108 The classes of persons qualified to be beneficiaries shall be—
- (a) decent, peaceable and indigent men and women aged at least 55 on 1st July in the year of election (unless they are certified on medical grounds as being unable to earn their living) who are—
    - (i) members not exceeding 10 in number at any one time;
    - (ii) persons who have lived or worked in the City of Edinburgh;
    - (iii) persons who have lived or worked in Midlothian generally (excepting the City of Edinburgh):  
 Provided that in classes (ii) and (iii) preference shall be given to persons of the name of Gillespie or Gibb or Heriot and to those who have been connected with the building trade in the City of Edinburgh;
  - (b) persons qualified to occupy the Sir William Fraser Homes in accordance with the provisions of this Order.

*Minimum amount and terms of pensions*

- 109 Each pension from the endowments trust fund shall be not less than £10 per annum, and shall be payable in advance at such times as the endowments trust may decide to the beneficiary or to such other person as the endowments trust may from time to time determine to be applied for behoof of the beneficiary.

*Endowments trust may provide houses, etc., for beneficiaries*

- 110
- (1) The endowments trust may build, purchase, lease, alter and maintain and may fit up and furnish, wholly or partly houses, flats or other buildings, for the accommodation of beneficiaries, and may allow such beneficiaries in lieu of or in addition to the payment of their pension to occupy such houses, flats or other buildings during the pleasure of the endowments trust, or may enter into an arrangement with any other organisation having similar objects.
  - (2) The endowments trust may employ such persons as the endowments trust may consider necessary to assist and advise the beneficiaries.
  - (3) The endowments trust may defray all expenditure incurred by them, in the exercise of the powers conferred on them by this section, out of the endowments trust fund.
  - (4) The endowments trust may apply any money borrowed by them in the exercise of their powers, to the building or purchase of houses, flats or other buildings for the accommodation of beneficiaries or for any purpose connected therewith (to which capital may properly be applied).

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### *Election of beneficiaries*

- 111 (1) The endowments trust shall, annually on a date or dates to be fixed by them, elect the number of beneficiaries for which in the opinion of the endowments trust the free income of the endowments trust fund will provide and shall determine the benefits which each beneficiary may receive during the ensuing year or such shorter period as the endowments trust may determine.
- (2) Beneficiaries shall be designated Gillespie pensioners or Watherston donees or Gibb and Heriot pensioners as the endowments trust may decide when the beneficiary is elected.

### *Applications for pensions, etc*

- 112 (1) The endowments trust shall, on request, issue to potential applicants for a pension or other benefit, a form of application with a schedule appended containing particulars of the information, certificates and documents required in support of their application.
- (2) Every application shall be made on the form so supplied and shall be lodged with the endowments trust along with the required documents.

### *C. Fraser Trust*

#### *Definitions for purposes of Head C*

- 113 For the purposes of this Head of this Part of this Order—
- (a) “deed of directions” means the deed of directions executed by Sir William Fraser K.C.B., LL.D., pursuant to the Fraser trust disposition and dated 11th December 1896 and registered in the Books of Council and Session 22nd March 1898;
- (b) “Fraser trust disposition” means the trust disposition and deed of settlement of the said Sir William Fraser dated 10th December 1896 and registered in the Books of Council and Session 22nd March 1898;
- (c) “Fraser trustees” means the trustees for the time being of the Fraser trust disposition.

#### *Sir William Fraser Homes to be maintained*

- 114 (1) The endowments trust shall maintain the property known as, and which shall continue to be known as, the Sir William Fraser Homes for occupation by the persons qualified in accordance with the provisions of this Head of this Part of this Order.
- (2) The endowments trust may employ such staff as shall be deemed necessary for the proper maintenance of such homes and for the assistance of the occupants of such homes.
- (3) The endowments trust may defray all expenditure incurred by them, in the exercise of the powers conferred on them by this section, out of the endowments trust fund.
- (4) The endowments trust may apply any money borrowed by them towards the repair and rebuilding of such homes and in payment of any expenditure connected therewith, to which capital may properly be applied.

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*Qualifications of persons to occupy Sir William Fraser Homes*

- 115 The classes of persons qualified to occupy the Sir William Fraser Homes shall be—
- (a) poor persons resident in the City of Edinburgh or Midlothian who, in the opinion of the endowments trust and of the Fraser trustees, are of satisfactory character, preference being given to authors and artists otherwise qualified under this paragraph; and
  - (b) persons qualified to be beneficiaries of the endowments trust in accordance with the provisions of this Part of this Order.

*Election of occupants*

- 116 (1) Vacancies arising in respect of occupants of the Sir William Fraser Homes appointed by the Fraser trustees shall be filled by the Fraser trustees provided that if they fail to fill such vacancy within six months of its arising the vacancy may be filled by the endowments trust. All other vacancies shall be filled by the endowments trust.
- (2) The endowments trust shall before the election of any persons as occupants of the Sir William Fraser Homes consult with the Fraser trustees, and the Fraser trustees shall be entitled to receive due notice of and to attend and vote at any meeting of the endowments trust called for the purpose of electing such occupants.

*Rights of occupants of Sir William Fraser Homes*

- 117 (1) The endowments trust may transfer the occupants of any house, whether elected before or after the commencement of this Order to any other house, in conformity with any scheme of division of the houses agreed between the Fraser trustees and the endowments trust:
- Provided that an occupant elected by the Fraser trustees shall not be so transferred without the consent of the Fraser trustees.
- (2) Occupants shall occupy the houses allocated to them during the pleasure of the endowments trust:
- Provided the right of occupancy of any occupant elected by the Fraser trustees may not be terminated without the consent of the Fraser trustees.
- (3) For the purposes of this section “house” means any house forming part of the Sir William Fraser Homes.

*Constitution of Fraser trustees*

- 118 For the purposes of this Head of this Part of this Order—
- (a) the existing Fraser trustees shall continue to be Fraser trustees;
  - (b) the Lord Lyon King of Arms for the time being or his nominee shall be an ex officio Fraser trustee and the Sir William Fraser Professor of Ancient History and Palaeography for the time being in the University of Edinburgh or his nominee shall be an ex officio Fraser trustee;
  - (c) the Fraser trustees may from time to time appoint not more than one additional trustee to act with them, but so that there shall not at any one time be more than three Fraser trustees.

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*Fraser trustees to be members of committees to administer Sir William Fraser Homes*

- 119 The Fraser trustees shall be members of any committee which may be appointed by the endowments trust to deal with the management and administration of the Sir William Fraser Homes. Such committee may, subject to the provisions of section 117 (Rights of occupants of Sir William Fraser Homes) of this Order, allocate the houses to be occupied by persons elected by the Fraser trustees and by the endowments trust respectively.

*Application of funds retained by Fraser trustees*

- 120 The Fraser trustees shall retain the existing assets held by them and shall apply the capital and income thereof in accordance with the deed of directions and the Fraser trust disposition including, without prejudice to the above generality, the decoration and internal improvement of the houses occupied by persons elected by the Fraser trustees.

*Fraser trustees may transfer remaining assets to endowments trust*

- 121 The Fraser trustees may at any time resolve to transfer, in whole or in part, to the endowments trust the remaining assets vested in them as the Fraser trustees.

*D. Russell and Foster Endowment*

*Russell and Foster Endowment vested in endowments trust*

- 122 All the lands, property, estate and securities forming the residue (together with the surplus income accumulated thereto) of the estate of the late Henry Walker Russell, held by and due to the trustees acting under his will dated 30th April 1948 and relative codicil registered in the Books of Council and Session 13th November 1954, shall, on the expiry of the last annuity payable in terms of the said will, continue to be vested in the endowments trust, and shall be held, managed and administered by the endowments trust in accordance with the provisions of this Order as a separate fund to be known as the “Russell and Foster Endowment”.

*Income of Russell and Foster Endowment to be applied in payment of pensions*

- 123 Subject to the provisions of this Part of this Order the free income of the Russell and Foster Endowment shall, after meeting the expenses of management thereof, be applied by the endowments trust in the payment of annual pensions to persons qualified as hereinafter mentioned in this Order to receive such pensions.

*Qualifications of Russell and Foster pensioners*

- 124 (1) The persons qualified to be beneficiaries of the Russell and Foster Endowment shall be respectable indigent Protestant men and women aged at least 55 at the date of their election, unless they are certified on medical grounds as being unable to earn their living, and who are resident in any part of Great Britain.
- (2) The endowments trust shall be the sole judges of who are to be deemed respectable for the purposes of this section.

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*Amount, etc., of Russell and Foster pensions*

- 125 Each pension to be paid by the endowments trust from the Russell and Foster Endowment shall be not less than £15 per annum, and shall be payable in advance at such times as the endowments trust may decide to the beneficiary or to such other person as the endowments trust may from time to time determine, to be applied for behoof of the beneficiary.

*Designation of Russell and Foster beneficiaries*

- 126 Beneficiaries under the Russell and Foster Endowment shall be designated Russell and Foster pensioners.

*E. Variation of Trusts*

*Variation of trusts*

- 127 In the event that the endowments trust or the Fraser trustees wish to vary or revoke all or any of the terms of the Russell and Foster Endowment or the Fraser trust disposition, as the case may be, or enlarge the powers of the trustees of managing or administering any of the property subject to the said trusts, the endowments trust or the Fraser trustees, as the case may be, may apply to the Court of Session by Petition for an Order of the Court for such variation, revocation or enlargement.